

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 Ryan Kenneth Randall,

5 Plaintiff,

6 v.

7 Bally's Casino CEO and Casino Security,
8 et al.,

9 Defendants.

Case No. 2:22-cv-01190-RFB-BNW

REPORT AND RECOMMENDATION

10
11 On August 17, 2022, this Court screened Plaintiff's Second Amended Complaint and
12 dismissed it without prejudice. ECF No. 7. The Court gave Plaintiff a new deadline of September
13 19, 2022, to file a Third Amended Complaint (TAC) and rectify the problems in his previous
14 complaint. *Id.* Now before the Court is Plaintiff's TAC. ECF No. 8.

15 **I. Screening Standard**

16 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
17 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
18 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
19 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
20 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
21 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
22 F.3d 1108, 1112 (9th Cir. 2012).

23 To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as
24 true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662,
25 678 (2009). The court liberally construes pro se complaints and may only dismiss them "if it
26 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
27 would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
28 556 U.S. at 678).

1 In considering whether the complaint is sufficient to state a claim, all allegations of
2 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylor*
3 *Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
4 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
5 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
6 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
7 However, unless it is clear the complaint's deficiencies could not be cured through amendment, a
8 pro se plaintiff should be given leave to amend the complaint with notice regarding the
9 complaint's deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 II. Analysis

11 In its last order, this Court explained that it could not understand Plaintiff's claims. ECF
12 No. 7. The Court noted that Plaintiff cited to several criminal statutes and jury instructions and
13 described fantastic and delusional scenarios. The Court explained that any future amended
14 complaint must contain a short and plain statement describing the underlying case, the
15 defendants' involvement in the case, and the approximate dates of their involvement. *Id.*

16 Plaintiff's TAC reads very much like his previous complaint. For example, the TAC starts
17 out as follows: "living, and to express emotion through song." The TAC goes on seeking to
18 charge several individuals, including Governor Sisolak and Mark Zuckerberg, with criminal
19 offenses. But "[o]nly a prosecutor can file criminal charges against a citizen ... [.]'" (*Jones v.*
20 *Harris*, 665 F. Supp. 2d 384, 404 (S.D.N.Y. 2009)), and "[t]he presence of a criminal statute
21 neither creates nor implies a corresponding private right of action.'" *Kunzer v. Magill*, 667 F.
22 Supp. 2d 1058, 1061 (D. Minn. 2009) (citing *United States v. Wadena*, 152 F.3d 831, 845-46 (8th
23 Cir. 1998)).

24 The remainder of the TAC recites opinions about prostitution laws, street performers, and
25 the lack of public restrooms on Las Vegas Boulevard. But for the same reasons stated before,
26 Plaintiff fails to state a claim upon which relief can be granted.

1 **III. Conclusion**

2 **IT IS THEREFORE RECOMMENDED** that Plaintiff's Third Amended Complaint be
3 DISMISSED for failure to state a claim and this case closed.

4 **NOTICE**

5 This report and recommendation is submitted to the United States district judge assigned
6 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
7 may file a written objection supported by points and authorities within fourteen days of being
8 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
9 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
10 1157 (9th Cir. 1991).

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12 DATED: October 11, 2022

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14 BRENDA WEKSLER
15 UNITED STATES MAGISTRATE JUDGE
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